

FILED  
 UNITED STATES DISTRICT COURT IN CLERKS OFFICE  
 DISTRICT OF MASSACHUSETTS  
 2003 DEC 19 A 8:47

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE LITIGATION	)	MDL No. 1450 DISTRICT COURT Master File No. 01-12257-PBS
THIS DOCUMENT RELATES TO: State of California, et al v. Abbott Laboratories et al CASE #: 1:03-cv-11226-PBS	)	(Matter to be submitted on the pleadings) Judge Patti B. Saris

**THE STATE OF CALIFORNIA'S APPLICATION TO FILE  
 SUPPLEMENTAL BRIEF REGARDING THE ISSUE  
 OF FEDERAL PREEMPTION OF REBATE CLAIMS**

California's motion to dismiss its Medicaid rebate claims without prejudice, along with its Motion to Remand, were heard before this court on December 12, 2003. The Court heard California's motion at the same time as it heard the motions to dismiss filed by the defendants in the Montana and Nevada cases. Federal preemption over Medicaid rebate fraud claims was raised in the Montana and Nevada pleadings but not raised in the context of California's arguments. However, during the hearing, the Court inquired about the effect on California's rebate claims and its pending motion to dismiss if the court found that the rebate claims were preempted by federal law whereby only the federal government could prosecute the claims.

///

///

///

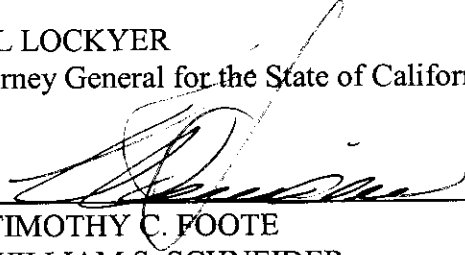
///

As California has not briefed this issue, it respectfully submits and request that the court accept and review these supplemental points and authorities on the issue of preemption over rebate fraud claims. See attached Exhibits A & B.

Dated: December 18, 2003.

Respectfully submitted,

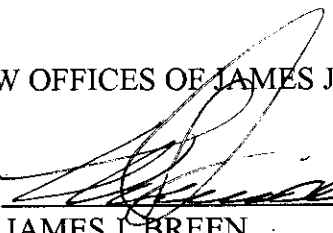
BILL LOCKYER  
Attorney General for the State of California

By:   
TIMOTHY C. FOOTE  
WILLIAM S. SCHNEIDER  
Deputies Attorney General  
Bureau of Medi-Cal Fraud & Elder Abuse  
1455 Frazee Rd., Ste. 315  
San Diego, CA 92108  
Tel. (619) 688-6114/688-6099  
Fax: (619) 688-4200

Attorneys for the Plaintiff, State of California

Dated: 12/18/03

LAW OFFICES OF JAMES J. BREEN

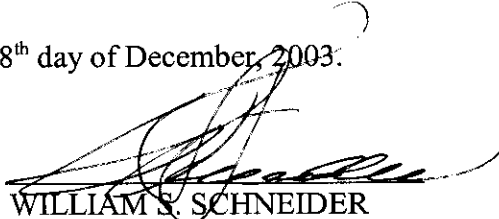
By:  FOR  
JAMES J. BREEN  
Attorneys for Relators  
90 Canal Street  
Boston, MA 02114-2018  
Tel. (617) 742-5800 ext. 115  
Fax: (617) 742-5858

**CERTIFICATE OF SERVICE**

I hereby certify that I, William S. Schneider, Deputy Attorney General, Bureau of Medi-Cal Fraud and Elder Abuse, for the State of California, caused a true and correct copy of the foregoing:

1. The State of California's Application to File Supplemental Brief Regarding the Issue of Federal Preemption of Rebate Claims;
2. Exhibit A - The State of California's Supplemental Brief Regarding the Issue of Federal Preemption of Rebate Claims; and,
3. Exhibit B - Declaration of Thomas A. Temmerman, Sr. Assistant Attorney General, In Support of Supplemental Brief Regarding the Issue of Federal Preemption of Rebate Claims.

to be served electronically on counsel of record on the Master Service List, pursuant to Section E of the Case Management Order No. 2, this 18<sup>th</sup> day of December, 2003.



WILLIAM S. SCHNEIDER  
Deputy Attorney General  
Bureau of Medi-Cal Fraud and Elder Abuse  
State of California